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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking)
In the Review of the) R.06-06-028
California High Cost Fund)
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REPLY COMMENTS OF SPRINT NEXTEL ON ASSIGNED COMMISSIONER'S RULING ON PHASE II ISSUES RELATING TO THE "CALIFORNIA ADVANCED SERVICES FUND"

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Introduction

Pursuant to the schedule provided in the September 12, 2007 "Assigned Commissioner's Ruling of Commissioner Chong on Phase II Issues Relating to the 'California Advanced Services Fund'" ("the ACR"), Sprint Communications Company, L.P. (U 5112 C), Sprint Telephony PCS, L.P. (U 3064 C), Sprint Spectrum L.P. as agent for Wireless Co., L.P. (U 3062 C) *dba* Sprint PCS, and Nextel of California, Inc. (U 3066 C) (collectively, "Sprint Nextel"), respectfully submit these Reply Comments.

As envisioned in the ACR and Decision (D.) 07-09-020,[1] the California Advanced Services Fund ("CASF") would provide funds, on a one-time basis, to help meet the "infrastructure cost of broadband facilities in California's unserved or underserved high cost areas. . . ."[2] Sprint Nextel recognizes that the CASF is potentially an important initiative, as it could provide assistance for achieving Broadband Task Force ("BTF") goals for greater availability of broadband services in high cost areas.

[1] *Order Instituting Rulemaking into Review of the California High Cost Fund B Program*, R.06-06-028, Interim Opinion Adopting Reforms to the High Cost Fund-B Mechanism [D.07-09-020] (2007) __ CPUC 2d __, 2007 Cal. PUC LEXIS ("D.07-09-020").
[2] *Id.* at 68.

Despite the importance of those goals, however, the opening comments on the ACR by other parties[3] do not reveal, in Sprint Nextel's view, a high level of enthusiasm for creation of a CASF. If anything, they appear to evidence a significant level of concern. DRA, for example, states that it has "numerous concerns about the proposed CASF" and observes that ". . . it may be premature to implement a [CASF] program until the necessary antecedent research and data are available for Commission examination and analysis."[4] CCTA states that, ". . . there remain a number of factual and legal issues to be explored before such a program is initiated."[5] According to Verizon, the CASF "may well be premature"; the "novel and creative approach" used in D.07-09-020 to justify creation of the CASF ". . . is completely at odds with past analysis and Commission decisions which have drawn a clear distinction between basic telephone services and advanced broadband services. The Commission fails to address those decisions or explain its changed position."[6] AT&T echoes this view.[7] SureWest states that "[t]he program should be kept small. . . ."[8] TURN and T-Mobile directly oppose creation of the program as unlawful.[9] The parties' virtually uniform effort to state their reservations regarding the CASF at the outset of their Opening Comments is telling and speaks for itself.

On the one hand, parties may have underlying concerns that, for California to achieve a significant reduction in the number of homes and businesses without broadband service, it will

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[3] Sprint Nextel received Opening Comments from Verizon California, Inc. and its Affiliates ("Verizon"), AT&T California, Inc. and its Affiliates ("AT&T"), The Utility Reform Network ("TURN"), Omnipoint Communications Inc., d/b/a T-Mobile ("T-Mobile"), California Cable and Telecommunications Association *et al*. ("CCTA"), SureWest Telephone ("SureWest"), and Calaveras Telephone Company *et al.* ("Small LECs").
[4] DRA Opening Comments at 1.
[5] CCTA Opening Comments at 1.
[6] Verizon Opening Comments at 1, 2-3, fns. omitted.
[7] *See* AT&T Opening Comments at 3 (". . . it remains difficult to square the [CASF] with [Public Utilities Code Section]("PU Code §")] 739.3. . . .")..
[8] SureWest Opening Comments at 1, although SureWest does state that, if it were "properly structured," the CASF "will be good for California's economy." *Id.* The Small LECs generally echo SureWest's concerns; the Small LECs, of course, do not receive California High Cost Fund-B funds.
[9] *See* T-Mobile Opening Comments at 1-2 (calling the proposed creation of the CASF ". . . unauthorized, inappropriate, and otherwise premature . . . ."); *see* TURN Opening Comments at 2-3 (" . . . the Commission lacks the authority . . . to siphon [CHCF-B] monies . . . . The Commission currently lacks the data necessary for it to efficiently and effectively target funds for broadband development."

take a program much larger than that envisioned in the ACR. In other words, the problem, if there is one, may be attributable to factors other than a perceived lack of broadband facilities. On the other hand, parties may also believe that, in the long run, with shareholder investment at stake, private enterprise will prove to be more efficient and effective than government intervention in the marketplace in delivering the telecom services that customers most want and need in their lives. A third possibility is simply that parties find it difficult to be enthusiastic when they lack details regarding the size, scope and operation of the proposed program.

Whatever the explanation for the misgivings expressed in the Opening Comments, the bottom line is that creation of the CASF is questioned or opposed by consumers (*e.g.*, TURN), wireless carriers (*e.g.,* T-Mobile), and cable-based competitors (*e.g.*, parties represented by CCTA). Even the parties that might be expected to benefit most from creation of the CASF, AT&T and Verizon, raise questions that evidence substantial concerns about this initiative. Clearly, the opening comments have not resulted in a single, obvious, universally supported approach to creation of a CASF. It may well be the case that the Commission intends to proceed with the CASF no matter what the parties' lack of enthusiasm. Nonetheless, the lack of widespread support for a CASF should be a signal to the Commission that caution is in order.

Discussion

I. THE COMMISSION SHOULD APPLY RIGOROUS ANALYSIS IN DECIDING WHETHER TO CREATE A CASF.

A. The Commission Should Gather More Information and Resolve Important Policy Issues.

Although the goal of expanded availability of broadband services in California has obvious merit, it is not clear that the CASF is the best means for attaining that goal. Broadband services will spread quickly throughout the entire State, without any government subsidy or support, when they offer a combination of features and capabilities that consumers want and need *and* when prices fall to levels that a critical mass of consumers in still unserved areas can easily afford.[10] It is unclear that a CASF alone can cause either of these preconditions to come into existence. The Commission needs to take a hard look at whether the alleged lack of broadband market penetration in high cost areas is due to a lack of facilities,[11] inherent obstacles of topography or demography (terrain and/or sparse population), a lack of technology, a mere lack of carrier interest, or, instead, a lack of demand from consumers. Without such data, the Commission risks going awry in creating a CASF.[12]

In its Opening Comments, Sprint Nextel urged the Commission to go beyond its May 2005 Broadband Report and its September 2006 Update Report and to acquire substantially more information *before* it proceeds with the CASF.[13] Sprint Nextel again urges the Commission to conduct more research to ensure that it is proceeding in the most cost effective and efficient manner. The Commission should not underestimate the difficulties it will encounter if it fails to

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[10] As matters presently stand, it is uncertain that building broadband infrastructure can create demand; if there is demand for broadband in California's most sparsely settled areas, it does not appear that carriers either perceive it or see sufficient customer numbers to justify investment. A survey that identified potential high-cost-area customers' key "price points" – how much they would be willing to pay for different levels of broadband speed – would help the Commission design a CASF that not only led to the availability of broadband services in high cost areas but also resulted in services that customers were willing to buy.

[11] As Sprint Nextel observed in its Opening Comments, broadband download speeds are available on a virtually ubiquitous basis throughout California through satellite-based Internet access services. *Id.* at 4, n. 7.

[12] As Verizon observes, ". . . proceeding with an infrastructure fund now assumes that lack of facilities is the principal roadblock to broadband availability in underserved high cost areas, despite the impact of many other factors that may hinder broadband adoption even where facilities are available." Verizon Opening Comments at 1-2.

[13] *See* Opening Comments of Sprint Nextel on Assigned Commissioner's Ruling on Phase II Issues Relating to the "California Advanced Services Fund," *filed* September 26, 2007, at 3-4 and 14-17. Beyond the information that the Commission has already gathered for the May 2005 Broadband Report and the September 2006 Update Report, Sprint Nextel believes that the Commission should also: 1) require ILECs to show all areas that are covered by their already existing franchise build-out commitments under the Digital Video Infrastructure and Competition Act of 2006 ("DIVCA"), PU Code § 5800 *et seq.*; 2) require the ILECs to delineate the differences between those commitments and what they now propose the CASF should cover, and 3) survey consumers across the State to determine how much they are willing to contribute to ensure that residents of allegedly unserved or underserved areas can have "advanced services." Sprint Nextel anticipates there could be substantially less public support for a CASF than for a fund supporting "universal" basic service. In any event, the Commission should not allow the CASF to be the means by which ILECs fund the satisfaction of their DIVCA obligations. Accordingly, it is imperative that performance of DIVCA obligations and all CASF funding to ILECs be fully public and easily tracked.

obtain the necessary information and to resolve important policy questions *before* it solicits applications for CASF moneys.

The Commission should recognize that this is definitely *not* a case of "if you build it, they will come." The Commission may build it, or subsidize some carriers in doing so, but consumers will not "come to broadband" just because it is available.. While vital to some and important to others, broadband is still not an absolute necessity to most consumers. "Getting it right" will be a difficult task under the best of circumstances, and virtually impossible without more information.

For example, the Commission proposes subsidizing infrastructure development for broadband services with 3MBPS download and 1 MBPS upload speeds – a proposal that AT&T (which is presumably closer to the marketplace than the Commission) forcefully, and unmistakably, criticizes as "much too high."[14] The Commission should take this criticism to heart. AT&T further comments that, "Those speeds may provide capabilities useful in the future, but they currently are well beyond those available to or needed by most Californians. . . . A much lower speed threshold that reflects the current competitive market offerings should be used to define acceptable broadband access and delineate where public support may be needed to provide minimally acceptable broadband facilities."[15]

Sprint Nextel agrees. If the Commission's proposed "Cadillac" specifications result in services costing far more than consumers' "VW" budgets, the services will not sell, whether construction of the facilities has been subsidized or not. The Commission will then be no closer to expanding the penetration of broadband services into the marketplace than it is today. Likewise, if (as Sprint Nextel believes) what consumers *really* want, and will derive the most flexibility from, is broadband service delivered to mobile devices, then subsidizing the delivery

[14] AT&T Comments at 2.
[15] *Id.*

of wireline broadband services to fixed desktop computers, with no mobility and high prices, if that is what the Commission (mistakenly) chooses to support, will again not result in greater broadband penetration. Fundamentally, unless there is incontrovertible evidence of a market failure, the Commission should let the market decide, rather than intervening in the marketplace.

The advanced broadband services for which the CASF would help fund infrastructure development, to a still unknown extent, are quintessentially *competitive* services, over which the Commission has no jurisdiction whatsoever. The Commission does not regulate broadband services. This means that it will not have the power to control the prices at which CASF-subsidized services would be offered.[16] There is, therefore, no necessary connection between the award of a CASF subsidy and the price that a firm might charge its customers in a particular area.

In their noticeable lack of enthusiasm for a CASF, parties seem to be sending strong caution signals. In Sprint Nextel's view, such caution is appropriate. A host of questions can and should be asked about the CASF: are broadband services really the most appropriate services for the Commission to subsidize? If these services are, as D.07-09-020 asserts, an essential part of universal service, then why does TURN (which is no slouch in promoting the expansion of universal service) so strongly oppose the CASF? If the Commission is to fund a CASF from CHCF-B funds, how large a portion of the CHCF-B "pool" of unused and otherwise refundable moneys should be devoted to this purpose, and under what terms and conditions? Would it not

[16] It is conceivable, of course, that the Commission could (a) identify applicants' proposed prices as a criterion for evaluating which firms will receive CASF funding and then (b) require applicants, as a matter of contract with the Commission, to charge their proposed prices for a specified period of time in exchange for receiving CASF funds. The problem is that the Commission has no inherently available yardstick for comparing different carriers' offers of differing upload and download speeds, coupled with differing features, functionality, and information services at differing prices. The Commission is poorly positioned to make such choices. Instead, the Commission should let consumers decide which features, functionalities, services and prices they want. By choosing one service over another, however, the Commission would be inserting itself deep into the interstices of what is supposed to be, at bottom, an unregulated market for information services. *See* Sprint Nextel Opening Comments at 8 and fn. 18, *citing National Cable and Telecommunications Association v. Brand X Internet Services* (2005) 545 U.S. 967 (affirming FCC determination that Internet access is an information service).

be more competitively neutral for the Commission to encourage the Legislature to support the *demand* side (*e.g.*, through tax and other incentives to help consumers purchase broadband services, in the same manner that the Legislature assisted consumers in purchasing hybrid automobiles, regardless of the identity of the manufacturer, through tax credits) than for the Commission to support the *supply* side through a program of subsidies to certain carrier "winners" that it picks? Would it not be more desirable to let consumers decide which broadband services *they* want, rather than having the Commission, through its CASF choices, pick "winners" and "losers"? Wouldn't the Commission be more likely to see carriers actively competing with each other to provide broadband for customers in "unserved" areas if they knew that customers were permitted to choose from among broadband service providers? Wouldn't this approach result in development of more broadband infrastructure than awarding a subsidy to a single provider? Doesn't the Commission's experience with providing subsidies to *consumers* for solar water heating, efficient appliances, insulation and other energy efficiency-related projects point toward the wisdom of subsidizing *consumers* rather than subsidizing carriers? Would this not be a more technology- and service supplier-neutral means of expanding broadband services in ways that those purchasing them would prefer? By not explicitly addressing such questions, the Commission may miss the opportunity to benefit from its experience with "demand side" incentives in the energy conservation sphere.

The questions above are all critical questions, and the Commission should not attempt to glide past them simply because it seems expedient to race forward while "the votes are there" for creation of a CASF. Even if *the goal* of expanding the availability of broadband services in high cost areas commands universal assent, the Commission should still ask whether creation of a CASF is the best means for achieving that goal. The Commission should carefully identify all of the possible pitfalls in creating the CASF. The Commission should compare and contrast the advantages and disadvantages of alternative approaches to spurring the development of broadband infrastructure in high cost areas. Once the pitfalls have been exposed, and once alternatives have been identified and evaluated, the Commission may realize that a *consumer-focused* CASF is superior to a carrier-focused CASF. An "ounce of research" may be worth a "ton of funding" when it comes to selecting the best means of spreading broadband in California.

B. Creation of a CASF Could Have Unexpected Negative Consequences.

The Commission should consider another explanation for why the opening comments reveal pervasive concern about the creation of the CASF. Since the issuance of Commission Decision (D.) 06-08-030,[17] parties have been proceeding on the belief that the Commission seeks to remove itself from the telecommunications marketplace and instead to rely, as much as possible, on competitive market forces to bring new and advanced services to consumers. Indeed, in D.06-08-030, the Commission found that California's retail telecom markets are already so vigorously competitive in all geographic areas that all retail pricing controls, including restrictions on geographic price deaveraging, could immediately be removed (except for basic service for residential customers).[18] And, as to broadband services, Finding of Fact 43 in D.06-08-030 unequivocally stated that, "Broadband is available to most Californians."[19] This finding is inconsistent with the view that California requires a substantial new government program to fund the construction of broadband infrastructure. Carriers have been, and will continue, actively developing and implementing their own plans for investment in (a) new facilities to

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[17] *Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, R.05-04-005, Opinion [D.06-08-030] (2006) __ CPUC 2d __, 2006 Cal. PUC LEXIS 367 ("D.06-08-030"), *modified and limited rehearing granted and rehearing otherwise denied* [D.06-12-044] (2006) __ CPUC 2d __, 2006 Cal. PUC LEXIS 511.

[18] *See id.* at 132 and 263-268.

[19] *Id.* at 264. In fact, the Commission stated that that the evidence showed that ". . . broadband is available in one hundred percent of all California ZIP codes." *Id.* at 164. (The Staff's September 2006 Broadband Update Report states that "multiple service platform options are available in 97.7% of California zip codes. . . ." *Id.* at 24.) The Commission further stated in D.06-08-030 that, "This widespread availability of broadband makes it possible for any business with access to broadband to purchase [Voice over Internet Protocol ("VoIP")] services, either directly from the broadband provider or from a 'pure play' VoIP provider, like Vonage." *Id.* at 164. In any event, if broadband is already available in 100% of California's ZIP codes, it is unclear why a *carrier-focused* CASF is necessary.

offer improved broadband service to existing customers and (b) new facilities to extend broadband service to new customers. These plans have necessarily been based upon use of shareholder funds. The creation of a CASF, however, is antithetical to the competitive marketplace envisioned in D.06-08-030, as it would undermine firms' incentives to invest in new facilities. As AT&T cogently observed:

> ". . . it is critical that the CASF not provide a subsidy to a new entrant if there is already a broadband provider in [a given] area. To do so will unavoidably affect the competitive market negatively by penalizing providers [that have] already built with their own capital. . . . [P]rivate investors will become less likely to enter California markets for fear of having to compete against a prospective, subsidized competitor. As proposed, the CASF will, in fact, create an adverse environment for infrastructure investment in California."[20]

AT&T's observation should give the Commission pause. Good intentions alone will not significantly increase the level of investment in broadband infrastructure in California's most sparsely settled areas. For all the good intentions underlying its creation, the CASF may have unintended consequences – consequences that are far more harmful than the lack of broadband facilities in certain remote high cost areas. Rather than spurring investment, the Commission may cause parties, in the future, to refrain from making investments until they see what incentives the Commission may offer. The result might be that competitors make fewer investments in new facilities in California. If this were the result of the CASF, the Commission would have imposed heavy damage on the investment climate that it was trying to create through D.06-08-030. Thus, evaluation of alternatives to the currently envisioned CASF is critical before the Commission solicits applications for CASF funding. If the Commission were to substitute enthusiasm for rigorous research, or if it were to substitute the desire to move quickly in place of obtaining more information, it would almost certainly reap a host of negative consequences. Given that the CASF would use ratepayer funds, such a result, if it occurred, would be a tragedy.

[20] AT&T Opening Comments at 2.

II. RESPONSE TO PROPOSALS AND COMMENTS BY OTHER PARTIES

In the table below, Sprint Nextel responds to proposals and comments made by other parties in their opening comments.[21]

PARTY	COMMENT/PROPOSAL	SPRINT NEXTEL'S RESPONSE
AT&T	The CASF should not provide a subsidy where there is already a broadband provider in the area. (P. 2.) This will negatively impact the competitive market "by penalizing providers who have already built with their own capital." *Id.*	Sprint Nextel largely agrees with AT&T, because Sprint Nextel has constructed and is expanding its wireless broadband network with its own (*i.e.*, shareholders') capital. However, the self-serving nature of AT&T's apparent aim to exclude or make it more difficult for competitors to enter the market is readily apparent.[22]
AT&T	The CASF should not consider an area "unserved" if the broadband that is available is not 3 MBPS download and 1 MBPS upload. (P. 2.) *See also* p. 10.	Sprint Nextel agrees. The Commission should make a more realistic judgment regarding the definition of "advanced" broadband services. If there is to be a CASF, the Commission should focus on bringing existing broadband services to areas that today have ***no*** broadband at all. An area should not be considered "unserved" simply because it does not have broadband services today at the proposed 3 MBPS/1 MBPS downstream/upstream thresholds.
AT&T	CASF funding recipients should be required to match CASF funds with their own private capital. Funding should be disbursed as the broadband provider makes its own investment. (P. 2.) The CASF "should not pick sides . . . or subsidize one competitor over another." (P. 7.)	Sprint Nextel agrees with the "matching funds" concept, but suggested in its Opening Comments that CASF funding recipients should be required to provide 80% of the funds for any CASF project. In addition, without clearly defined criteria decided in advance, the Commission will indeed risk "picking sides" and funding one competitor over another on the basis of arbitrary, *ad hoc* judgments. This is an inherent risk of a *carrier-focused* CASF. A *consumer-focused* program may help to mitigate those risks.
AT&T	"[O]nly after the parameters of the program are set, and applications are approved, should the Commission determine the	Sprint Nextel believes the Commission should conduct the research necessary for design of a successful program

[21] Failure to mention or discuss another party's proposal should not be interpreted as agreement with such proposal.

[22] In a limited technical sense, AT&T's point about providers "building with their own capital" is correct, but it must be remembered that one reason the ILECs are so entrenched in the marketplace is that they receive excessive switched and special access revenues from their competitors, as well as the proceeds of surcharges (taxes) collected from their competitors' customers. Thus, it is not surprising that AT&T would oppose the award of CASF funds in any areas where it is already offering broadband services, as this would simply make it more difficult for competitors to break into the market against AT&T.

	CASF fund size." (P. 2.)	*before* it solicits any applications. Applications should not drive the design of the program. Proceeding in the manner recommended by AT&T is not only backwards but risks awarding funds on the basis of what parties propose, rather than on the basis of what the Commission determines California needs. AT&T's approach would risk charges that funds were being awarded on an *ad hoc* basis. The Commission should determine the CASF fund size *before* it solicits any applications for funding particular projects.
AT&T	AT&T does not oppose restricting CASF funding eligibility to "those broadband services that can provide voice functionality, but believes the [CPUC's] current definition of 'basic telephone service' is too restrictive for that purpose. . . ." (P. 4.)	Sprint Nextel agrees – AT&T is correct in saying that the Commission should ". . . eliminate the bias toward legacy wireline service." If the Commission were to fail to do so, it could not legitimately claim that the CASF was technology neutral. As Sprint Nextel stated in its Opening Comments, and as AT&T explains (at p. 4), there are numerous ways in which broadband VoIP or wireless services would not fit within the Commission's definition of "basic service" in D.96-10-066. Thus it is imperative that the Commission clarify D.07-09-020 and the ACR and explain that its intention was simply to require that any CASF-funded broadband service be capable of supporting "voice" service.
AT&T	Relying on the CHCF-B Fund and its "basic service" requirements as the funding source for the CASF will "discourage, or possibly even prohibit, other providers and technologies from participating" in the CASF. (P. 5.)	Sprint Nextel agrees – and in its Opening Comments, in making the same point, suggested that the Commission should seek the requisite authority for a CASF from the Legislature, so that it would not have to "shoehorn" the CASF into the parameters of the CHCF-B.
AT&T	The Commission should collect funds for the CASF as they are needed, based on applications received and expenditures that will be paid over time. (P. 5.)	As indicated above, this approach is backwards and potentially highly unfair. The result of such an approach might also be that the Commission would find itself on the hook for far more program costs than it anticipated or intended.
AT&T	"[R]eimbursing recipients for concrete costs, rather than advancing funds up front, reduces the financial risk to the fund." (P. 6.)	On the one hand, reimbursing only proven expenses makes good sense and will certainly limit financial risk to the fund. On the other hand, carriers might view the reimbursement process

		as fraught with risk that the Commission or its Staff would decide that expenses were imprudent or unnecessary. Carriers might therefore decide not to participate in the program. Likewise, the Commission might find itself having to decide a host of disputes for which it has no particular expertise or yardstick. In Sprint Nextel's view, the best ways to reduce risk to the fund may be to: a) require a significant portion of funding to be self- (*i.e.,* carrier-) supplied and/or b) provide demand-side incentives to consumers instead of simply "handing money over" to a carrier, These are important policy issues that the Commission should resolve *before* soliciting applications for funding.
AT&T	"The first – and absolutely critical – step in defining the process for CASF applications is to clearly define, in advance, the criteria to be used in reviewing and deciding upon applications." (P. 8.)	Sprint Nextel could not possibly agree more strongly. If the Commission acknowledges this necessity, it will realize, properly, that it is still far from the point where it would make good sense to launch the CASF by soliciting applications for funding.
AT&T	"AT&T recommends that the Commission not require supported facilities to provide minimum data speeds." (P. 10.)	As worded, this recommendation makes no sense. AT&T's recommendation that the Commission utilize either the FCC's or the BTF's definition of broadband (200 kbps total or 500 kbps total, respectively), *see id.* at p. 10, makes more sense.
AT&T	"Unserved" areas should be defined as areas where service is not currently available at 200 Kbps in either direction (or alternatively, 500 Kbps as the BTF proposes). (P. 11.)	If an area does not have even 200 Kbps in either direction, it truly is an "unserved" area. But again, the availability of satellite-based services makes it unclear that there really are areas that are completely unserved.
AT&T	The CASF should not serve areas where there is already at least one provider. (P.11.)	As noted above, Sprint Nextel agrees.
AT&T	A broadband service provider need not serve the entire CBG. (Pp. 11-12.)	Sprint Nextel agrees. There is no point in extending service to areas where there are no potential customers, or where customers would not likely be found (*e.g.*, far from rural highways), but the Commission should recognize that satellite and wireless services may make far more sense in sparsely populated areas than wireline service.

AT&T	The Commission should not limit funding applications to areas that "*currently* qualify as 'high cost areas.'" (P. 12.)	Sprint Nextel could not disagree more strongly. There is absolutely no reason for a CASF to fund applications for broadband infrastructure support in areas that are not currently designated as high cost areas. The Commission should leave areas that are not "high cost areas" to the competitive marketplace. AT&T's proposed elimination of this restriction would result in a vast swelling of the size of the CASF and would likely have an anticompetitive impact on the marketplace. The Commission may need to receive evidence on the issue of what constitutes a "high cost area" for CASF purposes. Under no circumstances, however, should the Commission adopt a benchmark for identifying "high cost areas" for CASF purposes that is lower than the $36 per month benchmark identified in D.07-09-020.[23] Otherwise the Commission could find itself subsidizing broadband infrastructure in areas that are not legitimate recipients of CHCF-B funds.
AT&T	Various application requirements. (Pp. 13-15.)	It is premature for the Commission to identify application requirements. The Commission should first decide what the CASF will consist of before it solicits applications.
AT&T	AT&T favors a "single deadline for applications," rather than a 60-day "window" approach. (P. 17.)	The "single deadline" approach is only feasible if the Commission clearly defines in advance what it believes applications for CASF should entail and, in a State as large as California, if the Commission clearly identifies the specific areas where it wishes to apply CASF funds for broadband infrastructure support. Otherwise the Commission will receive a flurry of applications that are not actually comparable in any rational manner.
AT&T	The Commission should adopt audit, record-keeping, and verification requirements to limit "fraud, waste, or abuse." (Pp. 17-19.)	This goes without saying, but as Sprint Nextel observed in its Opening Comments, the Commission is likely to find that the magnitude of the task of auditing the manner in which recipients have spent CASF funds makes effective auditing next to impossible. This concern underscores the need for the Commission to carefully define, in

[23] *See* D.07-09-020 at 46-47 (authorizing a revised CHCF-B cost benchmark of $36 per line as of July 1, 2009).

		advance, what, exactly, CASF funds can and should be used for.
Verizon	The Commission should not rely on PU Code § 701 for authority to create the CASF. (P. 3.)	Sprint Nextel agrees. As Sprint Nextel explained in its Opening Comments, PU Code § 701 does not authorize the Commission to ignore specific legislative restrictions in PU Code §§ 270, 276, 276.5 and 739.3.[24]
Verizon	The Commission should rely on use of existing CHCF-B funds, if a surplus in fact exists in the CHCF-B program. (P. 3.)	The Commission's explanation of its legal authority to utilize CHCF-B funds for a CASF requires shoring up, as Sprint Nextel explained in its Opening Comments. It is also unclear whether there will be a CHCF-B surplus, but if there is, *State Assembly*[25] appears to point toward the need for refunds to be paid to the ratepayers who supplied the funds in the first place.
Verizon	The CASF should be directed only to areas without any wireline broadband availability, even if the service offered is below 3MBPS. (P. 4.)	The CASF should be directed to areas that have no broadband availability at all, whether it is wireline *or* wireless.
Verizon	". . . [T]he CASF should fund capital deployment, not the cost of operating and maintaining the broadband network." (P. 4.)	Sprint Nextel agrees with this recommendation, as far as it goes, *i.e.*, if the Commission continues to focus on the "supply side" rather than working with the Legislature to create appropriate incentives to consumers on the "demand side," as suggested in the text above. In this context, demand side incentives to consumers will not only allow consumers to determine which broadband services best meet their needs and desires, but will also result in a technologically neutral program in which the Commission does not attempt to select "winners" and "losers" among competing proposals. Demand side incentives are likely to prove more effective and efficient as carriers compete for newly incented customers.
Verizon	". . . [T]he CASF should capitalize on existing funding, such as matching funding from the applicant or other available funding sources such as the $60 million California Emerging Technology Fund (CETF)." (Pp. 4-5.) Carriers should be required to fund at least 50% of the project	It goes without saying that the Commission should encourage funding applicants, where possible, to leverage existing funding sources – although it also must be questioned why, if existing funding sources, such as the CETF, have not been effective in incenting

[24] *See* Sprint Nextel Opening Comments at 9-12. Accordingly, new legislative authorization would appear to be desirable. *See id.* at 13 and 18-19.
[25] *Assembly of the State of California v. Public Utilities Commission* (1995) 12 Cal. 4th 87 ("*State Assembly*").

	cost. (P. 5.)	carriers to serve currently unserved areas, the CASF would offer a sufficient incentive either. As stated above, the Commission should require not less than 80% (rather than 50%) of a proposed project to be funded by the applicant; this will ensure that CASF funds only support the "uneconomic increment" of proposed projects, as opposed to the portion of a project that carriers could legitimately be expected to fund. In no event should eligibility for CETF-funds be made a prerequisite for CASF funds, lest the SBC-AT&T and Verizon-MCI merger-generated CETF funds simply flow back to the firms that created the funds in order to gain Commission approval of the mergers.
Verizon	The Commission should evaluate similar programs elsewhere, such as the Rural Idaho Broadband Investment Program, which supplied $5 million for rural broadband projects. (P. 5.)	This recommendation is consistent with Sprint Nextel's overall recommendation that the Commission conduct more research and analysis before it launches the CASF prematurely by soliciting funding applications.
Verizon	The Commission should allow carriers up to 18 months after a CASF award to complete a CASF-funded project. Additional flexibility should be allowed for circumstances demonstrably outside the carrier's control. (P. 6.)	Sprint Nextel agrees.
Verizon	It is not clear that sufficient CHCF-B funds will actually be available for the CASF. (Pp. 7-8.)	If Verizon's calculations are correct, they suggest that the CASF will likely be a small program. Sprint Nextel does not oppose the idea of keeping the CASF small, especially at its outset.
Verizon	Verizon offers various suggestions the Commission "could" adopt. (Pp. 8-10.)	Verizon's speculation about steps the Commission "could" take only serves to underscore the lack of information and details about the CASF program to date.
Verizon	"It is unclear that a minimum requirement of 3MBPS downstream and 1 MBPS upstream is appropriate . . . ." (P. 10.)	Sprint Nextel agrees. There is no particular reason why the Commission should select these thresholds. A lower speed threshold requirement could be appropriate.
Verizon	". . . [A]pplicants should not be expected to make a verifiable showing that the area under consideration is unserved." (P. 11.)	Verizon's call for requiring carriers to "attest" (rather than "verify") that, to the best of their knowledge, an area is "unserved" is appropriate, but it

		necessarily means, as Sprint Nextel recommended,[26] that competing carriers should have at least 60 days in which to demonstrate to the Commission that an area *is* currently being served.
DRA	"Given the acknowledged need" in D.07-03-014[27] for more data regarding "the Digital Divide, and the ongoing efforts to collect such data" by the BTF, "it may be premature to develop a program using ratepayer money to subsidize broadband before we have a clear picture of broadband availability and subscribership in California." (P. 4.)	Sprint Nextel agrees. More data would help the Commission understand the causes of low broadband penetration in California, despite the high number of zip codes with broadband service from multiple providers, as reported in the 2006 Broadband Update Report. With the causes better understood, the Commission would be able to design a program that more effectively addressed those factors.
DRA	DRA "does not recommend lowering the minimum broadband speed because . . . high-speed broadband is required for VoIP services." (P. 5.)	The 3 MBPS downstream/1 MBPS upstream speeds envisioned in D.07-09-020 and the ACR are not prerequisites to use of a broadband "pipe" for VoIP service. Slower broadband services will accommodate VoIP service.

[26] *See* Sprint Nextel Opening Comments at 23, n. 42.

[27] *Rulemaking for Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006*, R.06-10-005, Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 [D.07-03-014] __ CPUC 2d __, 2007 Cal. PUC LEXIS 281. In this decision, the Commission carefully reviewed the requirements imposed on carriers in DIVCA for build-out of video facilities – facilities that almost certainly will also support broadband services. *See id.* at 161-66 (*mimeo*.). As mentioned above, the Commission should not allow the CASF, if it is created, to be used as a source of funds for ILECs to satisfy DIVCA obligations. Likewise, the Commission should not allow the CASF to operate as a means of reimbursing AT&T and Verizon for the CETF contributions that they volunteered to make and that were mandated in D.05-11-028 (SBC-AT&T merger, $45 million (total) CETF-funding obligation "*for the purpose of achieving <u>ubiquitous</u> access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010*") and D.05-11-029 (Verizon-MCI merger, $15 million (total) CETF obligation "*for the purpose of achieving <u>ubiquitous</u> access to broadband and advanced services in California, particularly in underserved communities, through the use of emerging technologies by 2010*"). *See Re Joint Applications of SBC Communications, Inc. ("SBC") and AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002), TCG Los Angeles, Inc. (U-5462), TCG San Diego (U-5389), and TCG San Francisco (U-5454) to SBC, Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation*, A.05-02-027, Decision Approving Application to Transfer Control [D.05-11-028] (2005) __ CPUC 2d __, 2005 Cal. PUC LEXIS 516 ("D.05-11-028"), *mimeo.* at 108-09(emphasis added), *rhg. denied*, Order Denying Rehearing of Decision (D.) 05-11-028 [D.06-04-074] (2006) __ CPUC 2d __, 2006 Cal. PUC LEXIS 142; *Re Joint Application of Verizon Communications, Inc. ("Verizon") and MCI, Inc. ("MCI") to Transfer Control of MCI's California Utility Subsidiaries to Verizon, Which Will Occur Indirectly as a Result of Verizon's Acquisition of MCI*, A.05-04-020, Decision Authorizing Change in Control [D.05-11-029] (2005) __ CPUC 2d __, 2005 Cal. PUC LEXIS 517 ("D.05-11-029"), *mimeo.* at 129-30 (emphasis added), *rhg. denied*, Order Denying Rehearing of Decision (D.) 05-11-029 [D.06-04-075] (2006) __ CPUC 2d __, 2006 Cal. PUC LEXIS 143. CASF funds should not be used to reimburse AT&T and Verizon for their pre-existing CETF obligations.

DRA	DRA is concerned that the CASF will "fund infrastructure build out by a single company" only, resulting in a monopoly environment in high cost areas. (P. 5.)	Sprint Nextel shares this concern.
DRA	". . . [T]he local service required of CASF applicants need not be the 'basic service' defined in D.96-10-066, but instead , , , just voice services . . . ." (P. 8.)	Sprint Nextel agrees and suggested such a clarification in its Opening Comments.[28]
SureWest	Target specific unserved areas that are uneconomic to serve with existing technologies. (P. 1.)	Sprint Nextel agrees.
SureWest	The program should not pick "winning technologies" but should only subsidize companies "whose customers are contributing to the fund." (P. 1.)	The Commission should not pick "winners" and "losers," but endeavor to leave the choice in the hands of consumers.
SureWest	The program "should be kept small." (P. 1.)	Sprint Nextel agrees. Once the scope, operation, and effects of the program are well understood, the Commission could evaluate whether to expand it.
SureWest	". . . [T]he Commission would be wise to wait for the" BTF Report and only "then move forward, as necessary, to enlist the support of the Legislature to act decisively in authorizing a program like the CASF." This would eliminate ". . . fear[s] that a party could undo a Commission approved CASF and avoid . . . legal challenges and delay . . . ." (P. 2.)	Sprint Nextel agrees.

Conclusion

The Opening Comments of other parties reflect a significant level of caution and concern regarding the propriety, size, scope and operation of the proposed CASF. Accordingly, the Commission should: shore up the legal rationale on which the program might rest (preferably by seeking legislative authorization), gather necessary information about current barriers to increased broadband penetration in high cost areas, and develop a well designed program that addresses those obstacles (rather than simply asking carriers to submit proposals). If such a program is technologically neutral and respects consumers' ability, as well as their right, to choose the advanced services that best fit their needs, the Commission should be able to

[28] *Id.* at 5-6.

overcome these concerns. Before soliciting applications for CASF funding, the Commission should clearly identify the design and goals of the program so that all funding applications and awards can be made against known, pre-determined, and fixed criteria.

Respectfully submitted:

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Dated: October 3, 2007

Certificate of Service

I, Earl Nicholas Selby, hereby certify that, on October 3, 2007, I caused a copy of the foregoing document, entitled:

REPLY COMMENTS OF SPRINT NEXTEL ON ASSIGNED COMMISSIONER'S RULING ON PHASE II ISSUES RELATING TO THE "CALIFORNIA ADVANCED SERVICES FUND"

to be served on the parties to this proceeding by electronic mail to the electronic mail addresses on the service list maintained on the Commission's Web site for this proceeding, as indicated on the following page.

I also certify that, on October 3, 2007, I caused a copy of the foregoing document to be served on the following persons at the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, by United States Mail, first class postage prepaid: Commissioner Rachelle B. Chong, Advisor Robert Haga, and Administrative Law Judge Thomas R. Pulsifer. I further certify that, on October 3, 2007, I caused a copy of the foregoing document to be served on: La Tanya Linzie, Cox California Telcom, LLC, 2200 Powell Street, Suite 1035, Emeryville, CA 94608, by United States Mail, first class postage prepaid.

I certify that the above statements are true and correct.

Dated: October 3, 2007 at Palo Alto, CA.

/s/
Earl Nicholas Selby

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